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UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* vs. DOUGLAS JOHN EYRAUD, *Defendant-Appellant.*	No. 73-2219 MEMORANDUM

[January 7, 1974]

Appeal from the United States District Court for the Eastern District of California

Before: MERRILL and TRASK, Circuit Judges, and GRAY,* District Judge.

We find the evidence fully sufficient to support the conviction. *See Darden v. United States*, 405 F.2d 1054, 1056 (9th Cir. 1969).

The appellant complains of having been asked on cross-examination whether he had a prior felony conviction. The question was asked in good faith, for the prosecutor had been reliably informed that the appellant recently had pleaded guilty in the Orange County Superior Court to the offense of armed robbery. The appellant answered "no" to the question, and a side bar conference followed. The court listened to arguments of counsel as to whether, under California law and under federal law, a plea of guilty, of itself and in advance of sentencing, constitutes a conviction. The court thereupon declined to seek to resolve this legal issue in order not to run the risk of making a wrong decision in a matter of "so

*The Honorable William P. Gray, United States District Judge for the Central District of California, sitting by designation.

little probative value," and he ruled that the subject might not be pursued further before the jury.

We find that the appellant was not unduly prejudiced under the circumstances, and we too withhold ruling on the technical legal question involved.

The appellant finally contends that certain colloquys at the bench were not reported or were only partially reported. However, no motion has been made to augment the record, and the appellant does not make any showing of prejudicial error occurring in any such instance.

The judgment of conviction is affirmed.

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